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*Attorneys for State Farm Fire and Casualty
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

STATE FARM FIRE AND CASUALTY
COMPANY, an Illinois Company,

Plaintiff,

v.

MARC COHODES, an individual, and
HOLBROOK HOLDINGS, INC., an
Oregon Corporation,

Defendant.

MARC COHODES, an individual,

Counterclaimant,

v.

STATE FARM FIRE AND CASUALTY
COMPANY, an Illinois Company,

Counter-Defendant

CASE NO. 2:25-CV-00041-BU-JTJ

**STATE FARM FIRE AND
CASUALTY COMPANY'S
ANSWER AND AFFIRMATIVE
DEFENSES TO DEFENDANT /
COUNTERCLAIMANT MARC
COHODES' COUNTERCLAIM**

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ANSWER AND AFFIRMATIVE DEFENSES

Plaintiff/Counter-Defendant State Farm Fire and Casualty Company (“State Farm”), by and through its below-signed counsel, and for its response to Defendant/Counterclaimant Marc Cohodes’ (“Cohodes”) Counterclaim, admits, denies, and alleges as follows:

1. The allegations in paragraph 1 are admitted.
2. Regarding the allegations in Paragraph 2, the Umbrella Policy, Doc. 1-2, is a contract of insurance, which speaks for itself and State Farm denies any allegation inconsistent with the Umbrella Policy. State Farm admits “Marc Cohodes” is the named insured on the Umbrella Policy.
3. Regarding the allegations in Paragraph 3, the Underlying Complaint, Doc. 1-3, is a pleading which speaks for itself and State Farm denies any allegation regarding the content of the pleading which is inconsistent with the pleading. State Farm admits “Marc Cohodes” is the defendant in the Underlying Lawsuit.
4. Regarding the allegations in Paragraph 4, the Umbrella Policy is a contract of insurance which speaks for itself and State Farm denies any allegation inconsistent with the terms of the Umbrella Policy.
5. Regarding the allegations in Paragraph 5, the Umbrella Policy is a contract of insurance which speaks for itself and State Farm denies any allegation inconsistent with the terms of the Umbrella Policy.

6. Regarding the allegations in Paragraph 6, the Underlying Complaint is a pleading which speaks for itself and State Farm denies any allegation regarding the content of the pleading which is inconsistent with the pleading.

7. The allegations in paragraph 7 state legal conclusions and interpretations to which no response is necessary. To the extent Paragraph 7 can be read to allege additional facts against State Farm, State Farm denies each and every one of them.

8. The allegations in paragraph 8 state legal conclusions and interpretations to which no response is necessary as well as references to the Underlying Lawsuit which is a legal pleading which speaks for itself and to which no response is required. The allegations in Paragraph 8 also do not make any allegation against State Farm and therefore no response is required. To the extent a response is required, and only as it relates to insurance coverage, denied.

9. The allegations in Paragraph 9 do not make any allegation against State Farm and therefore no response is required. To the extent a response is required, and only as it relates to insurance coverage, denied.

10. State Farm admits that the three posts made on December 17, 2023, February 29, 2024, and August 13, 2024 all were posted during the effective dates of the Umbrella Policy. However, the remainder of the Underlying Complaint is a

pleading that speaks for itself and State Farm denies any allegation regarding the content of the pleadings that is not consistent with the pleading.

11. The allegations in paragraph 11 state legal conclusions and interpretations, to which no response is necessary. To the extent paragraph 11 can be read to allege facts against State Farm, State Farm denies each and every one of them and denies it has a duty to defend Cohodes under any Policy.

12. The allegations in paragraph 12 state legal conclusions and interpretations, to which no response is necessary. To the extent paragraph 12 can be read to allege facts against State Farm, State Farm denies each and every one of them and denies it has a duty to indemnify Cohodes under any Policy.

State Farm specifically denies Cohodes' prayer for relief.

AFFIRMATIVE DEFENSES

Without conceding that it has the burden of proof as to any of these matters and based upon the information currently available to it, State Farm upon good faith, information, and belief asserts the following affirmative defenses. If investigation or discovery reveals that any of the following defenses are not supported by an appropriate basis in law or fact, such defenses will be withdrawn. The purpose of raising these affirmative defenses is not to create defenses where none exist, but, rather, to recognize that the pleadings, discovery, and trial preparations necessitate

an examination and evaluation of evolving facts and law. The decision maker should have available for consideration all defenses which may apply.

FIRST AFFIRMATIVE DEFENSE

Cohodes's Counterclaim fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

State Farm has no duty to defend or (potentially) indemnify Cohodes against the Underlying Lawsuit because coverage is limited or precluded by the applicable provisions, terms, conditions, limitations, and exclusions of the Homeowners Policy, the Umbrella Policy, and/or public policy or express provision of law, including, but not limited to:

a. The Complaint in the Underlying Lawsuit does not trigger the coverage grant of Coverage L – Personal Liability within Section II – Liability Coverages in the Homeowners Policy because there is no “bodily injury” or “property damage” caused by an “occurrence” alleged;

b. If the coverage grant of the Homeowners Policy were triggered, which it is not, exclusions, including but not limited to, Exclusions 1.a. and 1.b. preclude the duty to defend under the Homeowners Policy;

c. The coverage grant of the Umbrella Policy is not triggered for a “loss” resulting in an accident, including accidental exposure to conditions, which does not first result in “bodily injury” or “property damage” during the policy period; or the commission of an offense which does not first results in “personal injury” during the policy period;

d. To the extent the Underlying Lawsuit alleges a “loss” to which the Umbrella Policy applies, which State Farm does not believe that it has, there is no coverage because exclusions, including but not limited to Exclusions 6, 14, and 17, completely preclude the duty to defend;

e. Intentional wrongdoing is not insurable pursuant to Montana public policy; and

f. Mont. Code Ann. § 33-15-317 precludes insurance coverage as a matter of law for any punitive damages unless a policy expressly states that such damages are covered. Here, neither the Homeowners Policy nor the Umbrella Policy expressly cover punitive damages.

THIRD AFFIRMATIVE DEFENSE

State Farm fully and completely performed any and all of its contractual and other duties, express and implied, under the Homeowners and Umbrella Policies and

Cohodes is barred and estopped from asserting any cause of action against State Farm.

FOURTH AFFIRMATIVE DEFENSE

Cohodes has failed to mitigate his damages, if any.

FIFTH AFFIRMATIVE DEFENSE

Cohodes failed to perform his obligations under the terms, conditions, and limitations of the Homeowners and Umbrella Policies and, therefore, his Counterclaim is barred and Cohodes is responsible for his own damages, if any.

SIXTH AFFIRMATIVE DEFENSE

Cohodes's Counterclaim is barred under the equitable doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

The Umbrella Policy's coverage of libel claims is not illusory as there are libel claims that could be covered. Merely because the acts here are excluded does not mean all coverage is illusory.

RESERVATION OF RIGHTS

State Farm denies it is liable in damages to Cohodes in any amount based upon any theory. Further, all allegations in the Counterclaim not admitted, denied or explained above are now expressly denied. State Farm reserves the right to assert additional defenses and claims as those defenses and claims are ascertained.

WHEREFORE, having fully answered the allegations of Cohodes' Counterclaim, State Farm requests:

1. That Cohodes' Counterclaim be dismissed;
2. That the Court declare, in conjunction with State Farm's Complaint, that the Homeowners Policy and the Umbrella Policy do not afford defense or indemnity coverage for the Underlying Lawsuit, as defined in State Farm's Complaint; and/or
3. That State Farm be granted such other and further relief as this Court deems just and appropriate.

DATED this 28th day of July, 2025.

THE CHARTWELL LAW OFFICES, LLP

By /s/ Elissa M. Boyd

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CERTIFICATE OF SERVICE

I, Monique Taylor, declare as follows:

1) I am a citizen of the United States and a resident of the State of Oregon.

I am over the age of 18 years and not a party to the within entitled cause. I am employed by The Chartwell Law Offices, LLP, whose address is 1050 SW 6th Avenue, Suite 1100, Portland, OR 97204.

2) On July 28, 2025, I caused to be served upon counsel of record at the addresses and in the manner described below, the following document(s): **STATE FARM FIRE AND CASUALTY COMPANY'S ANSWER AND AFFIRMATIVE DEFENSES TO DEFENDANT / COUNTERCLAIMANT'S COUNTERCLAIM.**

Counsel for Defendant/Counter Claimant Marc Cohodes

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I declare under penalty of perjury under the laws of the State of Montana that
the foregoing is true and correct.

DATED this 28th day of July 2025.

/s/ Monique Taylor, Legal Assistant